

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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VICTORIA M. P. ZELL,	)	DOCKET NO.: PT-1999-10
	)	
Appellant,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE OF	)	FACTUAL BACKGROUND,
THE STATE OF MONTANA	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard on August 2, 2000, in the City of Shelby, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

Victoria Zell, appearing on her behalf, presented evidence and testimony in support of the appeal. The Department of Revenue (DOR), represented by Appraiser Kevin Watterud, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received. The Board then took the appeal under advisement. The Board having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

ISSUE STATEMENT

The issue before this Board is the market value of the

taxpayer's property as defined pursuant to §15-8-111.1

#### FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The property which is the subject of this appeal is described as follows:

Lots 1-4, Blk. 33, Johnson First Addn. to  
the City of Shelby, Toole County, Montana,  
and the improvements thereon. (Geocode  
#21-4424-28-1-21-02-0000)
3. The appeal form filed with this Board reflects DOR values of \$8,914 for the land and \$81,972 for the improvements.
4. The values reflected on the appeal form are not the DOR's reappraised values. These values are pursuant to §15-6-201 (z)(i). 2
5. For the 1999 tax year the DOR appraised the subject property at a value of \$14,973 for land and \$100,427 for the improvements.
6. On November 16, 1999, the taxpayer appealed to the Toole County Tax Appeal Board, requesting a total \$0 value for the

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1 MCA §15-8-111, Assessment - market value standard - exceptions (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

2 MCA §15-6-201, Exempt Categories. (1) The following categories of property are exempt from taxation. (z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):(i) 16% for tax

property, stating:

*The properties continue to be in jeopardy and with the conditions at this time and in confluence with other noted taxpayers' properties the determination is beyond fair reasoning or with any restoration offered in view to deter the damages and continuation of status.*

5. The County Board denied the appeal on December 14, 1999, stating:

*The Board believes that the appraised valuation set by the DOR of the subject property is equitable.*

6. The taxpayer appealed that decision to this Board on December 20, 1999, stating:

*There is a lack of realization and understanding as to responsibilities and the truth of circumstances that should make a difference in the marketability of any property. The question of the above is "It is equitable to what in in (sic) comparison?"*

7. In 1998, the taxpayer argued before this Board (PT-1997-54) requesting a value of \$0 for the property.
8. In PT-1997-54, *Victoria Zell v. Montana Department of Revenue*, the Board denied the taxpayer's appeal. The Board did order that the quality grade of the structure be reduced and the CDU (condition, desirability & utility) designation be reduced.
9. Neither the taxpayer nor the DOR appealed the Board's

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year 1999.

decision, *PT-1997-54, Victoria Zell v. Montana Department of Revenue*, to the District Court pursuant to *MCA §15-2-303 (2)*.

#### TAXPAYER'S CONTENTIONS

Mrs. Zell stated that the property has not increased in value or condition nor is it being assessed equitably with other homes in the area. She contends that, while her property taxes have continued to increase, those of her neighbors have decreased. (Exhibits 4 and 5)

Taxpayer's Exhibit 2 consists of 1992 and 1993 assessment information for several properties in the Shelby area along with the 1997 assessment notice for the subject property. Exhibit 7 is a comparison of the property taxes paid for the subject property and property taxes paid for other properties in the Shelby area.

The taxpayer argued that the appearance of the property, i.e. lawn, trees and shrubs, has been adversely affected by the City of Shelby having had disconnected water service to the property. (Exhibit 3).

#### DEPARTMENT OF REVENUE CONTENTIONS

Mr. Watterud testified that, as the result of the 1997 STAB decision (*PT-1997-54*), the subject property had been revalued. In compliance with the Board's order, the grade of the improvements was lowered to a 6? and the CDU (condition, desirability and utility) changed to Poor.

On October 1, 1999 the taxpayer filed an AB-26 form with the

DOR. (Exhibit A) No adjustments were made stating, "Due to the STAB (State Tax Appeal Board) decision of March 20<sup>th</sup> 1998 and no more information to the contrary, the appraiser feels value is fair and equitable."

Mr. Watterud testified that the sales comparison approach was used to value the subject property. The CAMAS (Computer Assisted Mass Appraisal System) selected three properties that sold to determine the value of the subject property. In summary, the Montana Comparable Sales Sheet (Exhibit C) illustrates the following:

Property	Subject	Comp #1	Comp #2	Comp #3
Year Built	1936	1925	1948	1977
Effective Age	1945	1960	1965	1985
Finished Basement	1,545 SF	0	1,350	1,316
1 <sup>st</sup> Floor Area	3,364 SF	1,972 SF	1,607 SF	1,708 SF
2 <sup>nd</sup> Floor Area	0	216 SF	0	0
Total Living Area	3,364 SF	2,188 SF	1,607 SF	1,708 SF
Grade	6+	5	5+	5
CDU	Poor	Average	Average	Average
<b>Pricing Data</b>				
Replacement Cost New	\$321,520	\$111,870	\$117,810	\$121,140
Percent Good	42%	67%	69%	85%
Replacement Cost New Less Depreciation	\$123,000	\$68,260	\$74,040	\$93,790
Land Value	\$14,973	\$8,348	\$9,192	\$16,085
Total Cost	\$138,173	\$83,968	\$92,322	\$121,045
<b>Valuation</b>				
Sale Date		9/93	11/94	8/92
Sale Price		\$69,000	\$90,000	\$100,000
MRA (multiple regression analysis) Estimate	\$116,301	\$74,643	\$92,410	\$91,321
Adjusted Sale		\$110,657	\$113,891	\$124,890
<b>Comparability</b>		<b>638</b>	<b>741</b>	<b>743</b>
Weighted Estimate	\$116,100			
Market Value	\$115,400			
Field Control Code	2			
<b>Indicator</b>		<b>**N-C**</b>	<b>**N-C**</b>	<b>**N-C**</b>

Based on the sales comparison approach to value, Mr. Watterud testified that none of the three comparable properties listed were comparable to the subject property. Mr. Watterud also testified that, if he had selected the cost approach to value as the method of establishing value, it would have resulted in a higher value indication.

#### BOARD DISCUSSION

The taxpayer has requested a value of \$0 before the local tax appeal board and before this Board. Granting the taxpayer a \$0 value would, in essence, be granting tax-exempt status. The only tax exemption allowable to the property is the 16% for 1999 pursuant to MCA, §15-6-201. *Exempt categories.*

The taxpayer also presented the argument of equity based on her property taxes increasing while those of neighboring taxpayers remain constant or are decreasing. The Board rejects this argument. The Montana Supreme Court held in State ex rel. Schoonover v. Stewart, 89 Mont. 257 (1931):

"And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him with only a just proportion of the tax. If his own assessment is not out of proportion, as compared with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much."

It was testified by the DOR that in previous tax years the taxpayer met the qualifications for the taxpayer assistance program pursuant to MCA, §15-6-134. *Class four property - description -*

taxable percentage.

**§15-6-134, MCA**, states: (1) Class four property includes: ...(c) the first \$100,000 or less of the market value of any improvements on real property ...and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, ... is not more \$15,000 for a single person, or \$20,000 for a married couple or a head of household..." (emphasis added);

**15-6-191, MCA**, states: "(1) A person applying for classification of property under the property tax assistance program described in 15-6-134(1)(c) shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating: ...(b) the fact that the person maintains the land and improvements as the person's primary residential dwelling..." (emphasis added):

**ARM 42.19.402 INFLATION ADJUSTMENT FOR PROPERTY TAX ASSISTANCE PROGRAM**, which states: (1) section 15-6-134 (2)(b), MCA provides property tax relief to low income homeowners. (emphasis added).

The taxpayer did not argue for property tax assistance before this Board. If she did not qualify for the taxpayer assistance program, she very well could see an increase in real estate taxes due. The taxpayer stated she did not apply for low-income status in 1998 or 1999.

If Mrs. Zell were to obtain a market value of \$0 and neighboring taxpayers were to pay taxes based on the market value of their property, how is equity achieved? The Board does not have the authority to waive or reduce taxes nor does it have any input in establishing the mill levies. The Board's jurisdiction in this matter is limited to the market value of the property and that market value is, without doubt, greater than \$0.

Water service had been cut off to the property for approximately 3 years (1996-1998). This came about due to a

dispute with the City of Shelby. At the time of this appeal, water service has been restored. If the taxpayer's external watering system is not functioning, it is the property owner's responsibility to make necessary repairs. Certainly, the appearance of a property can be adversely affected due to deteriorated landscaping, but this does not warrant a \$0 value. In addition, the Board reduced the CDU (**condition, utility, and desirability**) of the property to a "poor" status in *PT-1997-54, Victoria Zell v. Montana Department of Revenue*.

The DOR selected the sales comparison approach (Exhibit C) to value the property. Mr. Watterud testified that the sales selected are **not** considered comparable based on DOR standards. Mr. Watterud testified he chose the sales comparison over the cost approach because the result was a lower market value. While the DOR's intentions may have been good, this treatment of this taxpayer is not equalization if other taxpayers are not appraised in the same manner.

*MCA §15-9-101. Department to equalize valuations -- hearing. (1) The department shall adjust and equalize the valuation of taxable property among the several counties, between the different classes of taxable property in any county and in the several counties, and between individual taxpayers and shall do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. (emphasis added)*

This Board may not agree with the DOR's application of the sales comparison approach, but it will not order for a higher



value.

The taxpayer has not met the burden of proof supporting a value of zero nor has the taxpayer provided any supportable evidence to suggest a value any lower than the value established by the DOR.

#### CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter.  
§15-2-301 MCA.
2. §15-8-111, MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
3. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).
4. The appeal of the taxpayer is hereby denied and the decision of the Toole County Tax Appeal Board is affirmed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Toole County by the Assessor of that county at the 1999 tax year value of \$14,973 for the land and \$100,427 for the improvements, as determined by the Department of Revenue.

Dated this 1st day of September, 2000.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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GREGORY A. THORNQUIST, Chairman

( S E A L )

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JAN BROWN, Member

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JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of September, 2000, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Victoria Zell  
800 First Street South  
Shelby, Montana 59474

Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Toole County Appraisal Office  
226 1<sup>st</sup> Street South  
Shelby, Montana 59474

Larry Munson  
Box 36 Star Rt.  
Shelby, MT 59474

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DONNA EUBANK  
Paralegal